

DECISION

**NSUARB-PAP-10-07 & PAP-10-08
2010 NSUARB 167**

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE THE *MOTOR CARRIER ACT*

- and -

IN THE MATTER OF THE *MOTOR VEHICLE TRANSPORT ACT*

-and-

IN THE MATTER OF APPLICATIONS of **PARTY BUS ATLANTIC INC.** for the issue of a Motor Carrier License and an Extra-Provincial Operating License under the provisions of the said *Acts*.

BEFORE: David J. Almon, LL.B, Member

APPLICANT: **PARTY BUS ATLANTIC INC.**
Rod Sheppard, Owner
Keith Culleton

OBJECTORS: **ABSOLUTE CHARTERS INC.**
Jason T. Cooke, LL.B.

MOLEGA TOURS OF ATLANTIC CANADA (2001) LTD.
John Furzeland

PRESTIGE LIMOUSINE
Thariq Ali, Owner/Operator

TOWN LIMOUSINE SERVICE
Elias Kifle, Owner/Operator

HEARING DATE: **June 2, 2010**

DECISION DATE: **August 13, 2010**

DECISION: **The Application is denied.**

I INTRODUCTION

[1] On March 31, 2010, Rod Sheppard, operating under the business name of Party Bus Atlantic Inc. ("the Applicant" / "Party Bus"/ "Company") filed two applications (the "Applications") with the Motor Carrier Division for the issuance of a Motor Carrier License and for an Extra-Provincial Operating License to operate a limousine bus service.

[2] The Application for a Motor Carrier License was for transportation provided from any point to any point within Nova Scotia one way or the reverse thereof and read as follows:

F(1) SPECIALITY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE:

the transportation by limo bus of individuals and organized groups. This includes, but is not limited to, children's birthday parties, weddings, graduations, anniversaries, nights on the town, school parties, golf trips, concerts, Christmas Parties and Corporate events. Transportation to be provided from any point to any point within Nova Scotia one way or the reverse thereof.

List of Vehicles "Schedule E" inserted as E(1) as follows:

one (1) 45 passenger limo bus
one (1) 30 passenger limo bus

Rates, Tolls and Charges "Schedule D" inserted as D(1) as follows:

Birthdays:

Mon - Thurs (Child 15 and under) \$399 + HST up to 25 kids. \$15 each over 25. Maximum two hours.
Fri/Sat (Child 15 and under) \$459 + HST up to 25 kids. \$15 each over 25. Maximum two hours.
* 2 Jumbo Pizzas/Pop included for all birthday bookings

Stags/Stagettes/nights on the town/adult birthdays/Anniversaries are all: \$30 per person; based on minimum 25 people with 30 passenger vehicle and 35 person minimum with the 45 passenger vehicle. Prices based on two hour booking.

Note: Sunday - Thursday passenger minimums are reduced to 20 people for the 30 passenger vehicle and 30 people for the 45 passenger vehicle. Additional hours are \$300 per hour

Weddings:

\$995 + HST for the 30 passenger vehicle; and
\$1195 + HST for the 45 passenger vehicle
for a maximum four hour package. Additional hours are \$200 per hour

Grads:

\$80/per person, tax included for a maximum of 4 hours
\$110/per person, tax included for a maximum of 7 hours
\$135/per person, tax included for a maximum of 10 hours
\$50/per person, tax included, for maximum of 2 hours (when booked one month prior to GRAD).

*Note: Prices for grads are based on 80% minimum capacity;
24 passengers minimum for the 30 passenger vehicle
36 passengers minimum for the 45 passenger vehicle

Travel charges are \$150 per hour outside HRM for all bookings.

Discounts available include:

\$100 off wedding booking with Stagette booking.
Up to 25% off any booking if booked off peak times from October to March, depending on availability.
Up to 25% off any booking for last minute calls (within 7 days of actual run) if available.
Up to 1/3 off regular adult pricing for teenagers aged 16-18.
10% discount is available to senior citizens and military personnel year round.

Additional charges may apply for tolls, driver accommodations and gratuities where appropriate.

Note: Promotional pricing may be periodically offered to generate business during slow times; for example, during the month of May birthday parties will be offered at a rate of \$299.

- [3] The Application for the Extra-provincial Operating License requested a license for the transportation of individuals and organizational groups from any point within Atlantic Canada, as authorized one way or the reverse thereof, and reads as follows:
Operating Authority(s) "Schedule F" inserted as F(1) as follows:

F(1) SPECIALITY IRREGULAR RESTRICTED AREA PUBLIC PASSENGER CHARTER SERVICE:

the transportation by limo bus of individuals and organized groups. This includes, but is not limited to, children's birthday parties, weddings, graduations, anniversaries, nights on the town, school parties, golf trips, concerts, Christmas Parties and Corporate events. Transportation to be

provided from any point within Atlantic Canada, as authorized one way or the reverse thereof.

List of Vehicles "Schedule E" inserted as E(1) as follows:

one (1) 45 passenger limo bus
one (1) 30 passenger limo bus

Rates, Tolls and Charges "Schedule D" inserted as D(1) as follows:

Birthdays:

Mon - Thurs (Child 15 and under) \$399 + HST up to 25 kids. \$15 each over 25.
Maximum two hours.

Fri/Sat (Child 15 and under) \$459 + HST up to 25 kids. \$15 each over 25.
Maximum two hours.

* 2 Jumbo Pizzas/Pop included for all birthday bookings

Stags/Stagettes/nights on the town/adult birthdays/Anniversaries are all:
\$30 per person; based on minimum 25 people with 30 passenger vehicle
and 35 person minimum with the 45 passenger vehicle. Prices based on
two hour booking.

Note: Sunday - Thursday passenger minimums are reduced to 20 people
for the 30 passenger vehicle and 30 people for the 45 passenger vehicle.
Additional hours are \$300 per hour.

Weddings:

\$995 _ HST for the 30 passenger vehicle; and
\$1195 + HST for the 45 passenger vehicle
for a maximum four hour package. Additional hours are \$200 per hour.

Grads:

\$80/per person, tax included for a maximum of 4 hours
\$110/per person, tax included for a maximum of 7 hours
\$135/per person, tax included for a maximum of 10 hours
\$50/per person, tax included, for maximum of 2 hours (when booked one
month prior to GRAD).

*Note: Prices for grads are based on 80% minimum capacity;
24 passengers minimum for the 30 passenger vehicle
36 passengers minimum for the 45 passenger vehicle

Travel charges are \$150 per hour outside HRM for all bookings.

Discounts available include:

\$100 off wedding booking with Stagette booking.
Up to 25% off any booking if booked off peak times from October to
March, depending on availability.
Up to 25% off any booking for last minute calls (within 7 days of actual
run) if available
Up to 1/3 off regular adult pricing for teenagers aged 16-18.
Application for permanent; 10% discount is available to senior citizens
and military personnel year round.

Additional charges may apply for tolls, driver accommodations and gratuities where appropriate.

Note: Promotional pricing may be periodically offered to generate business during slow times; for example, during the month of May birthday parties will be offered at a rate of \$299.

- [4] The Application was advertised in *The Royal Gazette* on April 14 and 21, 2010.
- [5] Letters of Opposition were received from W. Brian Gillis, President, Absolute Charters, Inc. ("Absolute"); John Furzeland, Secretary-Treasurer, Molega Tours of Atlantic Canada (2001) Ltd. ("Molega Tours"); Thariq Ali, Owner/Operator, Prestige Limousine ("Prestige"); Elias Kifle, Owner/Operator, Town Limousine Service ("Town"), collectively, the ("Opposition"), and all of whom objected on the grounds that the four carriers have similar equipment and offer a similar product.
- [6] On May 13, 2010, Party Bus sought and received from the Board Temporary Authorities for the same services as requested in the aforementioned Applications for a permanent Motor Carrier License and a permanent Extra-Provincial Operating License.
- [7] The Board held a public hearing on June 2, 2010.

II EVIDENCE

Applicant - Party Bus Atlantic Inc.

- [8] Rod Sheppard and Keith Culleton gave evidence on behalf of the Applicant. By profession, Mr. Sheppard is a pharmacist, while Mr. Culleton is a teacher. They presented their evidence by way of PowerPoint presentation, which had been previously

filed with the Board. They testified that the Company has been operating since 2007, in Newfoundland, and they currently own and operate four party buses in that Province.

[9] The Applicant testified that they are heavily involved with charities in Newfoundland: drug awareness, Children's Wish Foundation, and the Down Syndrome Society, to name a few, and placed into evidence letters of support from some of the patrons and recipients.

[10] The Applicant testified that their vehicles, and the services provided, were unique, in that they could not be described as a coach, school bus, limousine or a van, but as a "speciality limo bus."

[11] The Applicant testified that they are different from the competition in that they have dance poles on both their busses as well as washrooms, modern seating, lighting and five televisions. As well, they have 30 and 45-passenger vehicles at their disposal for large wedding parties, children's parties and a so-called Party Bus Jungle Package.

[12] The Applicant testified that, at present, the Halifax Regional Municipality is serviced by one 23-passenger bus (Town); one 18 to 20-passenger (Prestige); one 21-passenger bus (Capital); and Ambassatours has two converted highway motor coaches with an executive interior which, the Applicant suggests, are very different from a limousine bus, and are not the same vehicle.

[13] They testified that, at best, there are three smaller limousine buses serving a population of over 2.5 times the size of St. John's, Newfoundland.

[14] In support of their Applications they relied upon a spreadsheet, purportedly showing the number of calls and e-mails they have received from passing out business

cards. They testified that they turned down numerous bookings because they were not actually able to operate until they were granted the Temporary Authorities. The Applicant testified that they received approximately 150 calls and e-mails since they arrived in Nova Scotia in March, with no advertising which, they opined, is “quite impressive.”

[15] The Applicant also placed into evidence eight (8) letters from individuals expressing interest in using their services, should their Applications be granted.

[16] As well, the Applicant provided letters of support from corporate businesses for the “new and exciting form of entertainment and transportation.”

[17] The Applicant also testified that they have hired local part-time drivers.

[18] Under cross examination, Mr. Sheppard testified that a 30-seater bus was purchased in December 2008 for approximately \$150,000, while a 45-seater was brought in from the US and cost in excess of \$200,000. He acknowledged that, presently, the two vehicles operate under Temporary Authorities. Mr. Sheppard acknowledged that there is room in the trunks and undercarriage of both the vehicles for luggage. With respect to maintenance, the vehicles have been inspected by SLH Transport Inc. and they will continue to carry out those services for them. No contracts have been executed.

[19] Mr. Sheppard was questioned on the operating authority, as spelled out in the Notices of Application, which stated that “transportation to be provided from any point within Atlantic Canada, is authorized one way or the reverse thereof.”

[20] With respect to the rates, Mr. Sheppard acknowledged that there were four categories with special pricing and that “if it’s not within those four categories...it would fall

under our regular rate scheme." His evidence under questioning from the Opposition in this regard revealed the following:

A. If you look at a stag, that would have a variance from a night on the town obviously if it's not a stag. Adult birthday, of course, could be classified as an adult birthday or a night on the town, or it could be a stagette or a stag. So they are different sub-groups within headings. I would assume that's probably the best way to describe them.

MR. SHEPPARD: Yeah, we roll everything together in that sort of category there. Stags, stagettes, nights on the town pretty much cover anything else.

Q. Sure.

A. And again, just to clarify, we're new to the area. We don't know, I guess, what the future holds with regards to who wants to book us and stuff. We just assume based on our Newfoundland business what we will book. And I guess if there's anything that needs to change, we would change...apply to the Board and change it.

MR. COOKE: I guess I'm a little confused just based on, I think, Mr. Sheppard, what you said. I look at this rate schedule, and you seem to indicate that anything outside of it falls under your regular rate?

A. Well, what I was referring to is exactly what I said, is the stag, stagettes, nights on the town. You know, if you wanted to call a night with the boys from hockey as a separate event, what I'm saying is that event would fall under nights on the town, and would fall under our regular \$30 per person based on a minimum of 25.

Q. But we wouldn't know that from reading this, right?

A. No, we just call it a night on the town.

Q. Okay. But I notice you give some examples on the kind of services you're providing. And I guess an example would be golf trips. Another example would be concerts. Another would be corporate events. Those are not captured in your rate schedule at all.

A. Uh-huh.

Q. Is that correct?

A. We didn't specify golf versus concerts. Again, that would be ... we would use the rate of \$30 per person and based on the hourly and the travel rates.

Q. Okay, it doesn't say that on here, though.

A. It doesn't specify for concerts or golf.

Q. Or corporate events. Correct?

MR. CULLETON: With regards to the rate, it looks like you are correct. Now we did refer to it in the Application that we had discussed previously, that corporate events was mentioned in the Notice of Application. Am I correct?

Q. Yeah, I guess. But my question is if we're reading this ...

A. Yes, yes. I guess, sir, that would have to be something that would have to be specified, yes.

Q. Okay.

MR. SHEPPARD: Yeah.

Q. So this is really incomplete.

MR. CULLETON: We're not submitting this as incomplete, sir. That's your words. We at the time feel that it was complete. If you feel that it's incomplete, then I guess that's your opinion.

Q. And it doesn't include ... because your list is not exhaustive because you said it's not limited to these activities.

A. No. You know, we could list off Bar Mitzvas, we could list off an extensive list of services that we could provide to Halifax. But you know, three years in business in Newfoundland, we still get different requests come in that I haven't heard of before.

Q. Just to continue, I see on the part ... and this is kind of under the four categories. It says, "Discounts available include ..." Have you found where we're talking about?

MR. SHEPPARD: Yes.

Q. Okay. And it gives some examples.

A. Uh-huh.

Q. My question is about the word "include." That seems to suggest that other discounts may be available.

A. Well, the suggestion is not accurate. Right now that is the discounts that we offer.

Q. Further on, you have a section that says "Note."

A. Yes, sir.

Q. And it says: "Promotional pricing may be periodically offered to generate business during slow times. For example, during the month of May, birthday parties will be offered at a rate of \$299."

A. Right.

Q. Okay. So just to break this down a bit, so you're saying you can offer promotional pricing.

A. Well, I guess when I applied, I tried to get directions to see how you could offer discounts similar to a grocery store and put a special on at times, and this is the direction I was given.

Q. But this doesn't give how much of a discount you could offer in terms of promotional pricing.

A. No, I think it's meant more of an example.

Q. That's right. So really under this rate tariff, you would be free to set your own promotional pricing during slow times.

MR. CULLETON: That would all depend, sir, on the discretion of the Board and what parameters they provide for us to operate under.

Q. Yeah. But I'm saying if your rate schedule is approved as-is because this is what you've ...

A. Once again, that's what we applied based on the fact that we did not know that a specific rate would have to be provided for specific events.

Q. So let me ask you this question then again. If your proposed schedule was approved by the Board as is written, you would be free to set promotional pricing at any rate during slow times.

MR. SHEPPARD: No, I don't agree with that.

MR. CULLETON: I disagree.

Q. Why not?

MR. SHEPPARD: Because it says here it's an example. "For example, during the month of May, birthday parties will be offered at a rate of 299." But again, if that's an issue with the Utilities Board, I'm sure it'll be brought forward to us.

But I mean, I guess my thought is that you can offer specials in your business, but we're going to stay within the parameters of what we have there as again discounts available. And the other example there is just listed as an example. That's the whole reason that's there is for an example.

...

[ROD SHEPPARD and KEITH CULLETON, Exam. by Mr. Cooke]

When it comes to driver accommodations obviously, you know, if we go out of town and we're allowed to go out of town and the driver stays over, we'll charge the customer the cost of the layover to stay there. And we don't need to make money.

We just want to get refunded for the amount that we actually ... it costs us to stay there. So I didn't get specific to say other than additional charges, because I don't know how much the hotel is going to cost me if I'm able to go to Moncton.

For tolls, you know, we're not going to ... we put it there, I guess, as a note that we could charge, I guess depending on how the economy goes and how the eventual business goes, that we could charge for tolls. Our plan right now is not to charge for tolls, and that's the end of that.

Q. Okay. So would you agree with me that after we've looked at this together that it's difficult to figure out what rates would apply in many situations based on a reading of this?

MR. CULLETON: I would not say many situations, no, absolutely not. I totally disagree. You found situations where you could question if the specific run is classified as a night out, is it classified as a specific concert trip or any event. But we do our rate scheduling and booking based on times more so than what we do on specific natures of events.

Q. Really? I'm just saying that because it looks to me that there's significant differences in the four different examples you give on both the amount charged, how it's charged for time versus ... you know, for example, weddings seems to be a set fee. Grads seem to be based on a certain amount of hours. Stags seem to be based on minimum amount of people. So they're ...

MR. SHEPPARD: We have consistent pricing for most events. You're obviously talking about, you know, I guess, finding a loophole in our pricing. You know, we think that it's very straightforward. We don't see it as being something that can't be understood.

MR. CULLETON: And if there is a technical glitch, then by all means we're willing to have a look at it. You know, once again we carry over a lot of our pricing from Newfoundland. Realizing that we don't have that latitude here in Halifax, we try to make as many adjustments as we possibly can.

Q. And I don't want to belabour the point, but would you agree that if I'm booking a corporate event and I read this schedule as set out, I would not ... at least I would not clearly know which rate would apply?

A. To be quite honest, Mr. Cooke, if you were booking a corporate event and you took the time to look this up and read it, I would say you'd be the exception as opposed to the rule.

[Sound file, Track 2, June 2, 2010]

[21] Under further questioning, about the Applicant's website, Mr. Culleton testified that it originated three years ago in Newfoundland. The various functions of the Party Bus are indicated on the home page of the website including: birthday parties, stag/stagette parties, Christmas parties, graduations, weddings, corporate functions and nights on the town. Mr. Sheppard testified that open liquor is not allowed on the Party Bus in Halifax, and while there are laws in Newfoundland prohibiting open liquor in any moving vehicle he acknowledged "it has happened on occasion" adding that people can drink before they get on the bus and once they are on the bus, they party, and they just listen to their music and "do whatever it is they want to do on the Party Bus within our rules." He did acknowledge, however, that there is nowhere on their website stipulating that alcohol is not allowed on the Party Bus in Nova Scotia.

[22] When asked whether or not the Applicant has the "financial wherewithal to carry this business," Mr. Sheppard replied that "that won't be an issue."

Opposition

W. Brian Gillis and Jack Smiley - Absolute Charters Inc.

[23] Brian Gillis has been working in the motor carrier industry for 30 years. He has managed and operated Nova Tours, Acadian Lines, and Absolute Charter. Jack Smiley has been employed for six years as Charter Manager. His responsibilities include hiring vehicles and training personnel. Prior to that, he worked for another transportation company for 26 years.

[24] Mr. Smiley testified that Absolute operates as part of the Ambassatours/Grayline Group, and is involved in the cruise ship, inbound and outbound

tours out of Halifax. There are 31 motor coaches, two specialized motor coaches and mini-coaches and they operate a fleet of 19 double decker buses exclusively for the cruise ship industry. In the charter operations, he testified that they provide vehicles to external customers and other operations of Ambassatours/Grayline.

[25] It was his evidence that the two speciality coaches are set up as executive-type coaches, one being a 26-passenger coach which has 12 coach seats up front, a midship galley and bathroom and shower and in the back there are tables and sofas, and the other unit is an 18-passenger coach which has sofas and arm chairs, a galley and bathroom and tables are in the back of the vehicle. Both units have the "normal coach accoutrements," he added.

[26] Mr. Smiley testified that they have PowerPoint capability on the front and rear monitors. The coaches are used for a number of events including graduation, golf and corporate events. As coaches, they have underneath luggage capability and the possibility for over night trips.

[27] Mr. Smiley testified that they are opposing the Applications because their two speciality coaches compete in the same market: birthdays, graduations, golf trips, corporate retreats. Also, he expressed concern about the pricing tariff of the Applicant which, he argues, leaves it "wide open as to prices, as the Application is presently worded." He testified that in slow times this could act against their buses and regular charters. In slow times, the Applicant has indicated the start-up has not been healthy for them. Mr. Smiley testified that their tariff allows the Applicant "to price where they choose."

[28] Regarding the evidence of the Applicant, he testified that his main concern is the pricing, and the latitude given in the pricing. He testified that he is also concerned about the website, which alluded to the vehicle “being the party” (rather than a mode of transport), as well as the presence of liquor on the vehicle, which is a concern to the industry, as liquor is not permitted, and it could put the drivers in a bad situation. He did allow, however, “if it’s a ‘quiet beer’ on the way to the golf course, that’s one thing.” He added that the appearance created by the website looks like (alcohol) is part of the planned trip.

[29] With respect to the 18 and 26 speciality coaches, Mr. Smiley testified that they are not highly-utilized vehicles. The peak months are June for graduation and golf-oriented trips. In January they can sit for a month, and over the year they are only utilized 10% to 20% of available days.

[30] Under cross examination Mr. Smiley testified that he did not consider the service offered by the Applicant as “unique”; although he did say that it was larger than the buses of that same type that are in use in Nova Scotia. He also acknowledged that their vehicles do not have dance poles, magic shows, animal shows or face painting.

John Furzeland - Molega Tours

[31] John Furzeland is the Manager of Charters with Molega Tours. He read from a prepared text, which he filed previously with the Board. He testified that over the past number of years, Molega Tours has used its cruise ship business to subsidize the charter operation. Their fleet consists of one 14-passenger 2000 Chev van; one 14-passenger

2005 Chev van; one 28-passenger 1998 Thomas Coach and one 56-passenger 1996 Prevost 3-45 highway Coach.

[32] In his presentation, he filed a Chart of Revenues for the 2009 season which is reproduced below:

Chart of Revenue for the 2009 Season

Month	Percentage of Annual Charter Sales	Percentage of Guide Service Sales	Percentage of Cruise Ship Sales	Percentage of Private Tour Sales
January	5%	0%	0%	0%
February	5%	0%	0%	0%
March	6%	0%	0%	0%
April	5%	0%	0%	0%
May	7%	0%	0%	23%
June	18%	11%	0%	6%
July	12%	0%	0%	12%
August	8%	18%	0%	5%
September	12%	26%	0%	24%
October	11%	45%	0%	26%
November	9%	0%	0%	8%
December	2%	0%	0%	0%

[33] He testified that Molega Tours generates its best revenue in June and September. He provided the Board with information depicting the utilization of equipment in 2008 and 2009 by month and work to the end of May 2010, which is reproduced in the following tables:

Total Number of Days of Work Per Month in 2008

Month	2005 Chev Van	2007 Chev Van	1998 Thomas Coach	1996 Prevost Coach
January	7	1	14	5
February	4	2	18	13
March	9	0	21	5
April	4	1	10	9
May	8	6	17	20
June	21	12	21	25
July	19	12	22	17
August	3	14	21	14
September	24	18	19	22

October	19	16	24	22
November	22	4	13	15
December	8	0	12	13

Total Number of Days of Work Per Month in 2009

Month	2005 Chev Van	2007 Chev Van	1998 Thomas Coach	1996 Prevost Coach
January	2	0	16	14
February	4	1	13	9
March	2	1	13	13
April	6	1	14	10
May	4	6	20	18
June	11	14	23	21
July	20	21	22	23
August	9	12	20	26
September	20	18	27	20
October	15	17	24	21
November	6	3	13	7
December	5	1	11	1

Total Number of Days of Work Per Month in 2010

Month	2005 Chev Van	2007 Chev Van	1998 Thomas Coach	1996 Prevost Coach
January	0	1	15	12
February	2	0	14	9
March	1	0	12	17
April	7	3	15	7
May	4	4	16	21
June				
July				
August				
September				
October				
November				
December				

[34] Mr. Furzeland testified that the Thomas Coach is stable in the marketplace. When the Prevost Coach was added to the fleet between the months of May to October 2007 there were only 17 days that were not booked. He testified that for the 2010 season, there are over 61 days that are not filled in the May to August 30 period for the 28-passenger coach, and 62 days for the 56-passenger coach. He added that the numbers are good for the first three years for the Prevost Motor Coach; however, the amount of work has not met expenses to date. He noted further that the Prevost required a new transmission in March 2009, as well as a new engine, which was not budgeted for nor planned in their projections, as well as the increase in fuel prices. He estimated that both the Thomas Motor Coach and Prevost Motor Coach need close to 21 days each to break even.

[35] Mr. Furzeland testified that Molega Tours has worked hard to create a place for itself in the tour and transportation business. A replacement plan for the fleet was initiated in 2006 when the 1998 GMC Van was retired for a 2005 Chev Van. In October 2007 the 1992 Dodge Van was replaced with a 2007 Chev Van. He added that the 1998 Thomas Coach will be the next to be replaced in 2010 and the 2005 Chev Van will be replaced with a Cut-away Bus followed by the 1996 Prevost Coach.

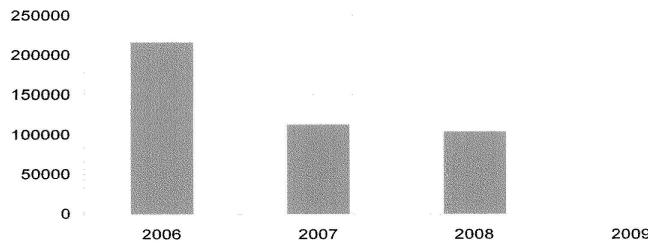
[36] Mr. Furzeland testified that in order to grow its charter markets and lessen the need for subsidies from the cruise ships, the charter operations need to stand on their own by increasing their rates and getting better utilization of their vehicles.

[37] Mr. Furzeland also placed into evidence a number of graphs depicting the Molega Tours' revenue and expenses, which are self-explanatory, and reproduced accordingly:

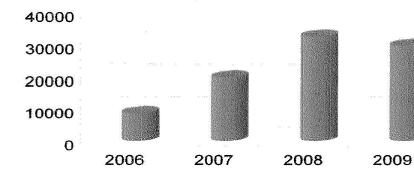
Revenue by Department
2006 to 2009

Revenue by Department Year	Shore Excursions	Private Tours	Guide Service	Charter Service	Total Revenue
2005					0
2006	216671.15	8682.9	6371	153429.4	385154.5
2007	113606.86	19820.53	4035.25	224769.4	362232
2008	104182.14	32620.52	5267.09	296444.8	438514.6
2009	0	29760.82	1857.02	313356.7	344974.5

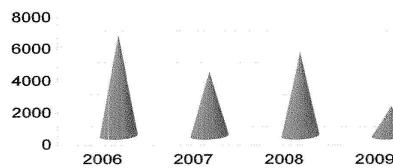
Shore Excursions



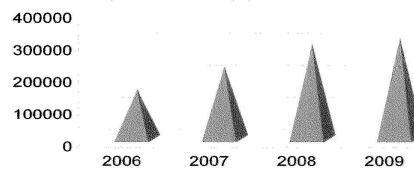
Private Tours



Guide Service

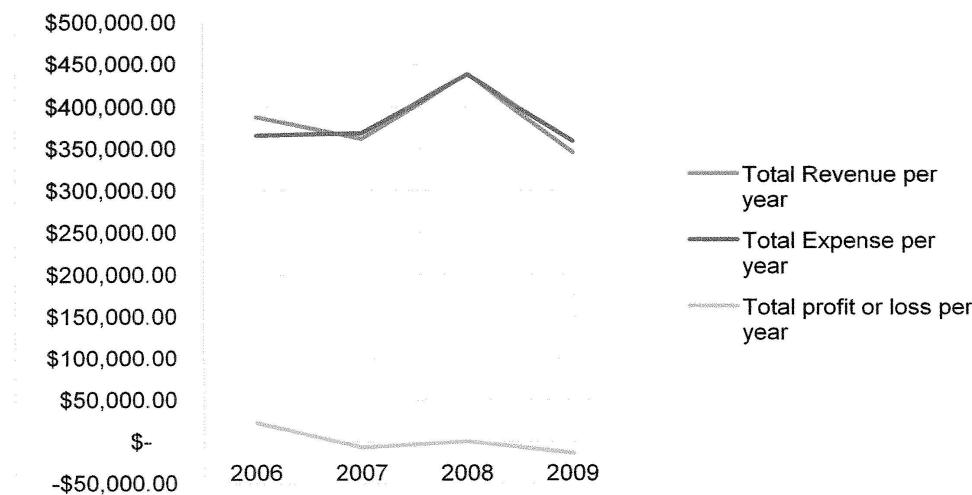


Charter Service



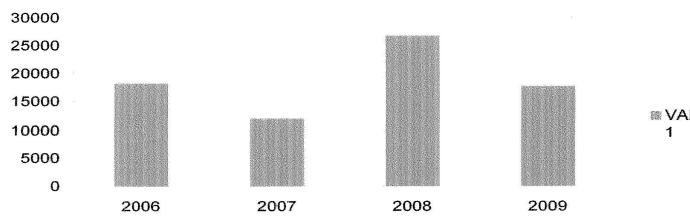
Revenue verus Expense

	2006	2007	2008	2009
Total Revenue per year	\$ 388,548.46	\$ 362,253.74	\$ 438,514.51	\$ 345,862.65
Total Expense per year	\$ 366,087.65	\$ 369,033.91	\$ 437,771.32	\$ 359,266.69
Total profit or loss per year	\$ 22,460.81	-\$ 6,780.17	\$ 743.19	-\$ 13,404.04

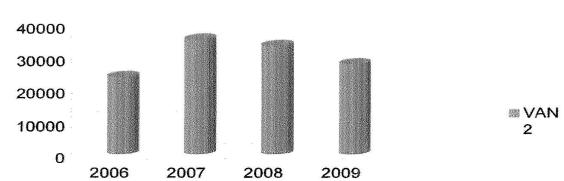


Total Revenue Per year	VAN 1	VAN 2	28 Passenger	56 Passenger	Total Revenue
2005					0
2006	18242.72	23970.17	92360.05	0	134572.9
2007	12046.12	35519.52	102668.15	61184.82	211418.6
2008	26812.28	33649.09	108205.05	123259.3	291925.7
2009	17840.77	28033.86	123193.82	143258.9	312327.4

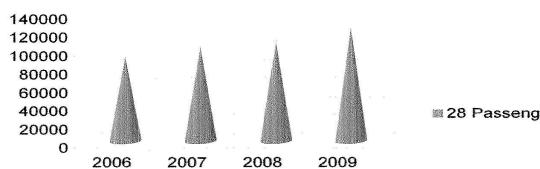
VAN 1



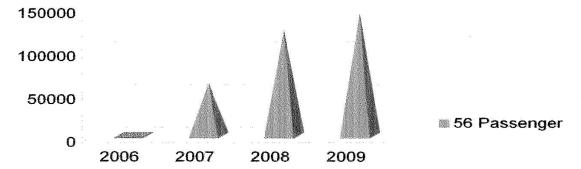
VAN 2



28 Passenger



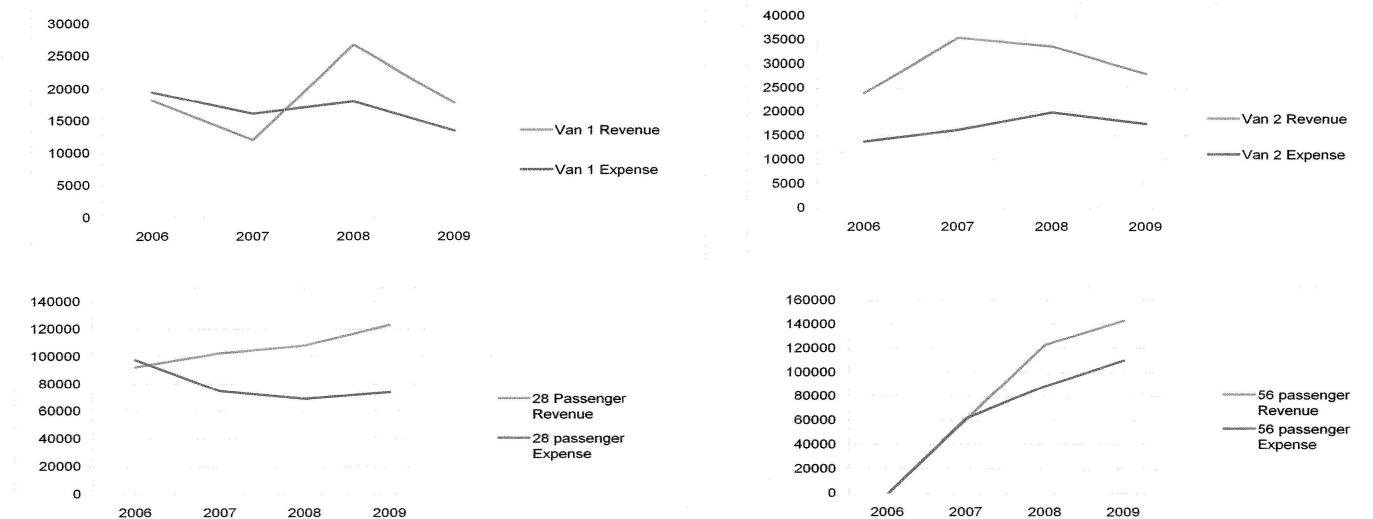
56 Passenger



REVENUE Verus Expense Direct

Revenue by Vehicle Year	VAN 1	VAN 2	28 Passenger	56 Passenger	Total Revenue
2005					0
2006	18242.72	23970.17	92360.05	0	134572.9
2007	12046.12	35519.52	102668.15	61184.82	211418.6
2008	26812.28	33649.09	108205.05	123259.3	291925.7
2009	17840.77	28033.86	123193.82	143258.9	312327.4

Expense by Vehicle Year	VAN 1	VAN 2	28 Passenger	56 Passenger	Total Expense
2005					0
2006	19530.75	13786.58	97545.8	0	130863.1
2007	16168.23	16231.54	74821.52	62131.33	169352.6
2008	18060.89	19857.02	69075.15	88696.02	195689.1
2009	13473.63	17450.16	73877.22	110008.7	214809.7



[38] Mr. Furzeland testified that he was making the financial statements of Molega Tours public because “the industry is in a mess.” He reviewed the graphs for the benefit of the Board and testified that Molega Tours has not made money since 2006. While the revenues have increased, so have the expenses. In 2008 he testified that Molega Tours “barely made money,” and in 2009 there was a \$13,000 loss. He wondered how they could continue if they keep losing market share. Mr. Furzeland testified they are doing everything they can to cut down on expenses and both he and his wife have never taken a salary from Molega Tours. His evidence was that it was their only income, noting that it was a good thing that he did not have a mortgage, because “we would not be able to survive.” He testified that what is needed in the industry is a stable market, an increase in their prices and replacement of their vehicles, where needed. In closing, he said they need to be able to keep the market share that they have in order to survive.

Elias Kifle - Town Limousine Service

[39] Elias Kifle testified that he operates 11 vehicles including the “luxury liner.”

[40] Mr. Kifle described his luxury liner as a 2007 International D-2 3600. It has a 23-seat capacity, bathroom, PowerPoint capability, satellite TV. He paid \$250,000 for the vehicle in 2007, which has accumulated only 37,000 km, which, if business was better, should have been at least 35,000 km to 40,000 km per year, on a vehicle such as this.

[41] His concerns are not because the Applicant has unique ideas but, rather, that the market is not there. He noted that when Prestige applied for their license in 2008 “business was booming.” Mr. Kifle testified that he is subsidizing his luxury liner vehicle through the use of their other vehicles. If the Party Bus Applications are granted, business,

generally, will not sustain two more limousine coaches. While he admired the ideas of the Applicant, he argued that they are taking his business away, which he described as a "direct hit." He was concerned about the Applicant's pricing policy which he described as "wide open," based on the Applicant's testimony. Mr. Kifle suggested that, while they might be doing good business in Newfoundland, businesses here, like his, are "hurting."

[42] Mr. Kifle's evidence was that in 2007 his vehicle was rented out approximately three or four times per week for such things as golf trips, weddings and proms. In 2007 it was so busy that he wished that he had a second vehicle. Since then, business has declined drastically from four to five runs a week to two to three runs per month. In 2009 he had to support his luxury liner vehicle through the use of the other vehicles in his fleet.

[43] He acknowledged that he supported Mr. Ali (Prestige) in his 2008 application because, at that time, there was an overflow of business. He noted that Mr. Ali's vehicle was very similar to his vehicle, and provided "top service to his clients," which is why he supported Prestige in their application. If Mr. Kifle knew then what he knows now, he testified that he would never have supported Mr. Ali's application.

Thariq Ali - Prestige Limousine

[44] Mr. Ali testified that he offers the same services in his "moving lounge" as the Applicant. He feels that his luxury liner and the service he offers is unique. He has been operating for three years and there has been decline in the limousine business since he began. He described his vehicle as 18 to 20 person capacity with lounge seating and it also had a dance pole, which he removed, because it obstructed the escape hatch. He has a good sound system, strobe lights and he is known as "Thai - The Party Guy." He testified

that his vehicle is a party bus, as well. The weekends are busiest and it has dropped off during the week. He does everything from proms, birthday parties from six to 16 years old, stags, stagettes, weddings and corporate work. In his mind, the market is saturated. People are not spending like they used to. He has other ventures such as limousine and tour services which subsidize his motor coach business.

III ANALYSIS AND FINDING

[45] The burden of proof is on the Applicant to show, on a balance of probabilities that the service it has applied for is in the best interests of the public and the factors spelled out in s. 13 of the *Motor Carrier Act* (the "Act").

[46] Section 13 of the *Act* gives the Board authority to consider any matter relevant to the application including the following:

Factors considered

13 Upon an application for a license for the operation of a public passenger vehicle or for approval of the sale, assignment, lease or transfer of such a license, the Board may take into consideration

(a) any objection to the application made by any person already providing transport facilities whether by highway, water, air or rail, on the routes or between the places which the applicant intends to serve, on the ground that suitable facilities are, or, if the license were issued, would be in excess of requirements, or on the ground that any of the conditions of any other license held by the applicant have not been complied with;

(b) the general effect on other transport service, and any public interest that may be affected by the issue of the license or the granting of the approval;

(c) the quality and permanence of the service to be offered by the applicant and the fitness, willingness and ability of the applicant to provide proper service;

(ca) the impact the issue of the license or the granting of the approval would have on regular route public passenger service;

(d) any other matter that, in the opinion of the Board, is relevant or material to the application.

[47] The practice of the Board has been to assess whether the evidence called by the Applicant indicates a need for additional equipment in this Province. This need is then weighed against the impact of the proposed applications on existing license carriers, in this case, Absolute, Molega Tours, Prestige, and Town Limousine Service, all of which have opposed the Applications.

[48] Both Mr. Culleton and Mr. Sheppard argued that they are looking for a charter service and an extra-provincial license.

[49] In dealing with the Application for the extra-provincial license, reference was made to the spreadsheet provided by the Applicant, which, according to their testimony, was based on calls and emails obtained from passing out business cards. Mr. Culleton stated that "it's not confirmed bookings" but "it does lend itself toward demand."

[50] It was noted by the Board that several of the inquiries came from New Brunswick, which the Applicant stated was relevant to their Applications in Nova Scotia because they were applying for an extra-provincial license "to travel and to do business in other provinces."

[51] In his evidence, with respect to the extra-provincial license, Mr. Culleton was asked what a Nova Scotia Extra-Provincial License allows him to do and he responded accordingly:

My understanding is that it allows me to leave here and to do business out there and come back. I don't know if it means I can set up there right away, but that's not a road I've looked into right now. But essentially, we leave here, do business in New Brunswick, and come back to home base.

[52] The motor carrier industry in Newfoundland is unregulated. The evidence of the Applicant was that both Mr. Culleton and Mr. Sheppard assumed such was the case in Nova Scotia, where, in fact, it is heavily regulated. Mr. Culleton acknowledged that he was unaware of the rule, before relocating to the Province admitting that "we truly did not know this authority had to be granted by the Utility Board for this to be, legal."

[53] There is an evidentiary burden on the Applicant to show that there is a demand for the proposed service, not in excess of what is currently provided in the market. In May, the Applicant was granted Temporary Authorities. Temporary Authorities are granted, when it appears to the Board, that there is an immediate or special need for the provision of a service in the transportation passages. It is an *ex parte* application, with no advertisements or public hearing or opportunity for potential opponents to be heard in this case. The Temporary Authorities authorize the Applicant to provide the service specified in the authority for no more than 90 days. It is important for carriers who receive a Temporary Authority to understand that there is no presumption that a corresponding permanent authority or license will be granted.

[54] Since the granting of the Temporary Authorities the Board must look to the evidence of today's demand in the marketplace now. The Applicant, at the time of the hearing, had been operating for more than two weeks on the Temporary Authorities; not a long time.

[55] Since that time, the evidence of Shawn Evans, operator/manager for the Applicant was that he had booked only two "runs", both adult birthday parties, where

patrons were picked up and dropped off at downtown Halifax bars, a service the Board finds is a similar service provided by the Opposition.

[56] The Board attributes little weight with respect to the letters of interest provided by the Applicant. Often times the Board will hear from existing customers, interested customers and community members who will come and testify as to the service offered by the Applicant and where evidence can be tested by the opposition and the Board. As there were no witnesses at the hearing, other than Mr. Culleton and Mr. Sheppard to speak on their behalf, the Board is disadvantaged, and, accordingly, attributes little weight to the letters, as the evidence on demand is both inadequate and unpersuasive.

[57] Much was made by the Opposition of the Applicant's website and the basis of interest from prospective customers. Mr. Cooke argues that the website strongly suggests "a very different model" than what was presented at the hearing today, suggesting further that the website was "misleading in terms of what kind of business model the applicant is offering."

[58] Admittedly, it was originally set up as a Newfoundland-based website, depicting pictures of Party Bus patrons purportedly drinking alcohol, with such messages as "for corporate events, we will provide the wine and cheese" and "for the stag and stagette think of how much you can save on..." In Nova Scotia, motor carriers are not permitted to serve or permit the consumption of alcoholic beverages in their vehicles.

[59] Mr. Cooke submits, and the Board agrees that, perhaps, the message conveyed in the advertising was at best, unwitting, and at worst, misleading. The Opposition suggests, and the Board agrees, that any expressions of interest through the

website, are going to be based on the information depicted on the website and, accordingly, the Board places little weight to that interest.

[60] With respect to the rate schedule, the one proposed by the Applicant is a little puzzling, inasmuch as it appears not only to be incomplete, but unclear. There is also provision to allow full latitude to reduce prices, which is a concern to the Opposition who argue that the Applicant would, quite simply, be undercutting on price to their detriment. In their evidence, both Mr. Kifle and Mr. Ali spoke in terms of the effect on discounting, when it is unavailable to them, under their respective rate schedules.

[61] Regarding the quality and permanence of the service to be offered by the Applicant, Mr. Cooke expressed concern that there did not appear to be any evidence of the Applicant's financial records before the Board. He questioned how fitness can be judged, without knowing that a company has the financial capability to, for example, fund a business, especially in early times, highlighting the evidence of only two bookings over the three-week period.

[62] The Board would note that it was provided with Notice to Reader financial statements for Party Bus Inc. to the year ended March 31, 2009, from which the Board observes that the Company has evidenced some revenue growth, and they are financially supported by the shareholders. In any event, the financial records are not the determinative factor in the final decision of the Board, in this matter.

[63] In support of their Applications, Party Bus Atlantic Inc. referenced a Board decision, *In Re Thariq Ali O/A Prestige Limousine*, 2008 NSUARB 156 where Thariq Ali, the owner/operator was granted a Motor Carrier License. At that time, December 2008, Mr.

Ali had garnered considerable support. In fact, Mr. Kifle, owner/operator of Town and like Mr. Ali, an opponent in the present hearing, stated that, at that time, Town was unable to meet the demand and that there was a need for many more limousine buses, and the Prestige application was granted. The evidence of both of these individuals and Absolute, in light of the subsequent global financial crisis and recession fallout, tells a much different story today.

[64] Mr. Ali does not think that the Applicant's service is unique. He testified that he also has lounge seating and a pole (since removed). As well, his vehicle, which he also described as a party bus, has seen a decline in business because the market is saturated. The evidence of Mr. Kifle was that if the Party Bus Applications are granted, it would take business away from him, to his great detriment.

[65] Mr. Smiley testified for Absolute suggesting that the service offered by the Applicant was not unique, and their two speciality coaches are under-utilized; in fact, they are only used 10% to 20% of available days.

[66] Perhaps the most compelling evidence against granting these Applications was that of Mr. Furzeland. While he allowed that Mr. Culleton and Mr. Sheppard have "unique" themes, and acknowledged their valuable contributions to charity, he testified that Molega Tours can provide the same service. In Newfoundland, in an unregulated environment, Party Bus does not have a number of motor coaches competing against the market place as in Nova Scotia. As Mr. Furzeland stated, "everything is less (in Newfoundland)."

[67] Mr. Furzeland has provided the Board with persuasive evidence of a company "in trouble," in need of replacing equipment and one which sees the numbers of patrons declining, all to their detriment.

[68] The evidence of the Opposition is that they have invested greatly in equipment, some of which has to be replaced, and that they all have diminished ridership.

[69] The Board is aware, from the evidence of the Applicant, that they set up business in Nova Scotia without having the authority in place. As well, Mr. Sheppard and Mr. Culleton brought over personnel from Newfoundland to assist them with their business. It is unfortunate that the Applicant did not conduct due diligence prior to purchasing their vehicles, relocating personnel and making the move, to set up operation in Nova Scotia. The Board, in determining whether an application shall be approved, should not take into consideration the fact that the Applicant has purchased vehicles in the hope of obtaining a permanent license. Otherwise, everyone would do the same, thwarting the objectives of s. 13 of the *Act*.

[70] As stated previously, the burden of proof in this proceeding, is on the Applicant. While the Applicant submits they have a unique product and provide unique services with a huge demand, the Board finds there is very little concrete evidence of demand for such in Nova Scotia, especially when this evidence is weighed against the already largely unused capacity of the Opposition. Accordingly, there is insufficient reason for the Board to exercise its discretion to grant the Applications. The Board finds there is no evidence to show a necessity for the issuance of a license to the Applicant.

[71] The Board, accordingly, denies the Applications.

[72] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 13th day of August, 2010.

David J. Almon